



SENTENCING IN WISCONSIN

Snapshots of Information on Wisconsin Sentencing

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The Sentencing Guidelines Worksheets, Revised*Andrew Wiseman, Research Analyst*

On July 1st, 2005, new sentencing guidelines worksheets were made available to courts and attorneys throughout Wisconsin, along with revised Notes that concisely explain the aggravating and mitigating factors listed on each worksheet, for each offense on which the Sentencing Commission collects data. Those eleven offenses are:

- **1st and 2nd Degree Sexual Assault**
Wis. Stats. 940.225(1) and (2)
- **1st and 2nd Degree Child Sexual Assault**
Wis. Stats. 948.02(1) and (2)
- **Burglary**
Wis. Stat. 943.10(1)
- **Theft — More than \$10,000**
Wis. Stat. 943.20(3)(c)
- **Robbery**
Wis. Stat. 943.32(1)
- **Armed Robbery**
Wis. Stat. 943.32(2)
- **Forgery and Forgery Uttering**
Wis. Stats. 943.38(1) and (2)
- **Delivery or Possession w/ Intent to Deliver Cocaine, 1 gram or less**
Wis. Stats. 961.41(1)(cm), 961.41(1m)(cm)
- **Delivery or Possession w/ Intent to Deliver THC, 200–1000 grams**
Wis. Stats. 961.41(1)(h), 961.41(1m)(h)

The most prominent changes are aesthetic—the Notes have been reduced in length, and the worksheets have been redesigned to minimize confusion. Rather than reading vertically *and* horizontally, the worksheets now list, along the left margin, the sentencing factors that courts most often consider in evaluating risk and offense severity. Additionally, the sentencing judge can now specify whether individual factors are mitigating or aggravating. The images below show the contrast between the new worksheets and the old.

OFFENSE SEVERITY	Mitigating	Aggravating
Characteristics of the Offense		
Weight of THC: <input type="text"/> grams	<input type="checkbox"/>	<input type="checkbox"/>
Cash: \$ <input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dealing for profit / not dealing for profit	<input type="checkbox"/>	<input type="checkbox"/>
Possession to accommodate another person	<input type="checkbox"/>	<input type="checkbox"/>
Fortified drug house	<input type="checkbox"/>	<input type="checkbox"/>
Proximity to weapons and/or other drugs	<input type="checkbox"/>	<input type="checkbox"/>
Conduct more serious than the offense of conviction	<input type="checkbox"/>	<input type="checkbox"/>
Crime committed in exchange for sexual activity	<input type="checkbox"/>	<input type="checkbox"/>
Extreme negative impact on neighborhood	<input type="checkbox"/>	<input type="checkbox"/>
Vulnerability of intended recipient, <i>specify</i> :	<input type="checkbox"/>	<input type="checkbox"/>
Other, <i>specify</i> :	<input type="checkbox"/>	<input type="checkbox"/>
Aggravating Factors, Wis. Stat. § 973.017 <input type="checkbox"/> N/A		
Concealed or altered appearance	<input type="checkbox"/>	<input type="checkbox"/>
Gang related offense	<input type="checkbox"/>	<input type="checkbox"/>
Bulletproof clothing	<input type="checkbox"/>	<input type="checkbox"/>
Delivery, distribution or possession with intent to deliver to prisoner	<input type="checkbox"/>	<input type="checkbox"/>
Delivery, distribution or possession with intent to deliver on public transit vehicle	<input type="checkbox"/>	<input type="checkbox"/>
Other, <i>specify</i> :	<input type="checkbox"/>	<input type="checkbox"/>
Penalty Enhancers, Wis. Stat. § 939 <input type="checkbox"/> N/A		
Repeat Offender (§ 939.62) <input type="checkbox"/> Pleased and proved	<input type="checkbox"/>	<input type="checkbox"/>
Dangerous weapon (§ 939.63) <input type="checkbox"/> Pleased and proved	<input type="checkbox"/>	<input type="checkbox"/>
Repeat drug offender (§ 961.48) <input type="checkbox"/> Pleased and proved	<input type="checkbox"/>	<input type="checkbox"/>
Distribution to persons under 18 (§ 961.46) <input type="checkbox"/> Pleased and proved	<input type="checkbox"/>	<input type="checkbox"/>
Possession near certain public places (§ 961.495) <input type="checkbox"/> Pleased and proved	<input type="checkbox"/>	<input type="checkbox"/>

Delivery or Possession w/ Intent to Deliver THC, 200–1000 grams -- Wis. Stats. §§ 961.41(1)(h), 961.41(1m)(h)

I- Offense Severity Assessment		
A-Determine factors affecting severity of the PID-THC:		
<input type="checkbox"/> Accommodation possession; <input type="checkbox"/> Indicia of profit motive. <input type="checkbox"/> Presence of: <input type="checkbox"/> large amounts of cash, <input type="checkbox"/> luxury items. <input type="checkbox"/> Fortified drug house.		
B-Assess harm caused by the offense:		
Consider impact of the crime on the community and neighborhood. <input type="checkbox"/> Impact on the neighborhood tended to increase fear, disorder, a milieu of violence or crime, or to reduce property values. <input type="checkbox"/> Children or adolescents exposed to the criminal conduct. <input type="checkbox"/> Defendant possessed drugs with intent to deliver to secure sexual activity from another person. <input type="checkbox"/> Defendant possessed drugs with intent to deliver to pregnant woman, child, or addict. <input type="checkbox"/> Other. <i>See Notes.</i> _____		
C-Assess the offender's role in the offense. If more than one offender, determine:		
<input type="checkbox"/> Leader or organizer of criminal activity. <input type="checkbox"/> Involvement manipulated or pressured (but less than statutory coercion). <input type="checkbox"/> Minimal role. <input type="checkbox"/> Other _____		
D- Statutory aggravating factors and penalty enhancers.		
Statutory aggravating factors. <i>See Stat. §973.017 and Notes.</i>		
<input type="checkbox"/> Committed in association with gang. <input type="checkbox"/> Distribution to prisoners. <input type="checkbox"/> Committed on a public transit vehicle. <input type="checkbox"/> Concealed, disguised, altered appearance to hinder identification. <input type="checkbox"/> Wore a bulletproof garment. <input type="checkbox"/> Other _____		
Penalty enhancers:	Pleaded and proved	Uncharged/Dismissed
Dangerous weapon Stat. §939.63. Identify weapon _____	<input type="checkbox"/>	<input type="checkbox"/>
Distribution to persons under 18 Stat. §961.46.	<input type="checkbox"/>	<input type="checkbox"/>
Crime within 1,000 feet of school etc. Stat. §961.49.	<input type="checkbox"/>	<input type="checkbox"/>

Delivery or Possession w/ Intent to Deliver THC, 200–1000 grams -- Wis. Stats. §§ 961.41(1)(h), 961.41(1m)(h)

On each worksheet, the basic division between offense severity and criminal risk has been retained. However, within the principle sections—***Offense Severity*** and ***Risk Factors***—individual items have been reorganized and occasionally replaced. The revision addresses three major objectives: (1) ensuring that the worksheets more accurately represent the known sentencing "universe"—the various issues that judges take into account when making sentencing decisions, (2) simplifying the worksheets' design and appearance, and (3) enhancing their usefulness for data collection.

Offense Severity

Though their phrasing and location may have changed, many factors that currently appear in the first principal section, ***Offense Severity***, will seem familiar. Previously, this section was divided into five different parts:

- (A) Factors affecting the severity of the offense
- (B) Harm caused by the offense
- (C) The role of the offender
- (D) Statutory aggravating factors and penalty enhancers
- (E) Other factors related to offense severity

Currently, there are 4–8 different parts, depending on the specific offense. For example, First Degree Sexual Assault includes the following six categories:

- Characteristics of the Offense
- Type of Harm
- Aggravating Factors
- Penalty Enhancers
- Role in the Offense
- Vulnerable Victim

And theft of more than \$10,000 includes the following *eight* categories:

- Characteristics of the Offense
- Degree of Preparation
- Method of Access to Property
- Type of Harm
- Aggravating Factors
- Penalty Enhancers
- Role in the Offense
- Vulnerable Victim

Previously, the individual factors listed under ***Offense Severity***, and the categories into which they were placed, were standard items and standard classifications, with some variation based on applicable penalty enhancers and offense characteristics. The revised worksheets have been tailored to each offense. For example, the robbery worksheet asks whether the victim suffered great bodily harm or extreme emotional distress, whether the victim was threatened, abducted or restrained, and whether the victim was particularly vulnerable. In contrast, the worksheets for delivery or possession with intent to deliver cocaine/THC ask whether the defendant was dealing for profit, whether the defendant was armed, whether the crime was committed merely to accommodate another person, and whether the crime was committed in exchange for sexual activity. For reference, see the illustrations below.

OFFENSE SEVERITY	Mitigating	Aggravating
Characteristics of the Offense		
Value of loss: \$ <input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>
Motivated by need for basic necessities	<input type="checkbox"/>	<input type="checkbox"/>
Motivated by greed	<input type="checkbox"/>	<input type="checkbox"/>
Conduct more serious than the offense of conviction	<input type="checkbox"/>	<input type="checkbox"/>
Other, <i>specify</i> :	<input type="checkbox"/>	<input type="checkbox"/>
Degree of Preparation		
None or spontaneous	<input type="checkbox"/>	<input type="checkbox"/>
Some preparation	<input type="checkbox"/>	<input type="checkbox"/>
Extensive preparation	<input type="checkbox"/>	<input type="checkbox"/>
Type of Harm		
Threat / Abduction / Restraint	<input type="checkbox"/>	<input type="checkbox"/>
Great bodily harm / extreme emotional harm	<input type="checkbox"/>	<input type="checkbox"/>
Extreme degree of force	<input type="checkbox"/>	<input type="checkbox"/>
Aggravating Factors, Wis. Stat. § 973.017 <input type="checkbox"/> N/A		
Concealed or altered appearance	<input type="checkbox"/>	<input type="checkbox"/>
Gang related offense	<input type="checkbox"/>	<input type="checkbox"/>
Elderly victim	<input type="checkbox"/>	<input type="checkbox"/>
Bulletproof clothing	<input type="checkbox"/>	<input type="checkbox"/>
Crime committed to influence governmental policy	<input type="checkbox"/>	<input type="checkbox"/>
Other, <i>specify</i> :	<input type="checkbox"/>	<input type="checkbox"/>
Penalty Enhancers, Wis. Stat. § 939 <input type="checkbox"/> N/A		
Repeat Offender (§ 939.62) <input type="checkbox"/> Pleased and proved	<input type="checkbox"/>	<input type="checkbox"/>
Dangerous weapon (§ 939.63) <input type="checkbox"/> Pleased and proved	<input type="checkbox"/>	<input type="checkbox"/>
Hate crime (§ 939.645) <input type="checkbox"/> Pleased and proved	<input type="checkbox"/>	<input type="checkbox"/>
Role in Offense		
Minimal / Leader	<input type="checkbox"/>	<input type="checkbox"/>
Manipulated or Pressured	<input type="checkbox"/>	<input type="checkbox"/>
Abused position of trust / authority	<input type="checkbox"/>	<input type="checkbox"/>
Other, <i>specify</i> :	<input type="checkbox"/>	<input type="checkbox"/>
Vulnerable Victim		
Cognitively deficient	<input type="checkbox"/>	<input type="checkbox"/>
Mentally ill	<input type="checkbox"/>	<input type="checkbox"/>
Youthful victim, <i>provide age</i> : <input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>
Otherwise vulnerable, <i>specify</i> :	<input type="checkbox"/>	<input type="checkbox"/>

Robbery, Wis. Stat. § 943.32(1)

OFFENSE SEVERITY	Mitigating	Aggravating
Characteristics of the Offense		
Weight of THC: <input type="text"/> grams	<input type="checkbox"/>	<input type="checkbox"/>
Cash: \$ <input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dealing for profit / not dealing for profit	<input type="checkbox"/>	<input type="checkbox"/>
Possession to accommodate another person	<input type="checkbox"/>	<input type="checkbox"/>
Fortified drug house	<input type="checkbox"/>	<input type="checkbox"/>
Proximity to weapons and/or other drugs	<input type="checkbox"/>	<input type="checkbox"/>
Conduct more serious than the offense of conviction	<input type="checkbox"/>	<input type="checkbox"/>
Crime committed in exchange for sexual activity	<input type="checkbox"/>	<input type="checkbox"/>
Extreme negative impact on neighborhood	<input type="checkbox"/>	<input type="checkbox"/>
Vulnerability of intended recipient, <i>specify</i> :	<input type="checkbox"/>	<input type="checkbox"/>
Other, <i>specify</i> :	<input type="checkbox"/>	<input type="checkbox"/>
Aggravating Factors, Wis. Stat. § 973.017 <input type="checkbox"/> N/A		
Concealed or altered appearance	<input type="checkbox"/>	<input type="checkbox"/>
Gang related offense	<input type="checkbox"/>	<input type="checkbox"/>
Bulletproof clothing	<input type="checkbox"/>	<input type="checkbox"/>
Delivery, distribution or possession with intent to deliver to prisoner	<input type="checkbox"/>	<input type="checkbox"/>
Delivery, distribution or possession with intent to deliver on public transit vehicle	<input type="checkbox"/>	<input type="checkbox"/>
Other, <i>specify</i> :	<input type="checkbox"/>	<input type="checkbox"/>
Penalty Enhancers, Wis. Stat. § 939 <input type="checkbox"/> N/A		
Repeat Offender (§ 939.62) <input type="checkbox"/> Pleased and proved	<input type="checkbox"/>	<input type="checkbox"/>
Dangerous weapon (§ 939.63) <input type="checkbox"/> Pleased and proved	<input type="checkbox"/>	<input type="checkbox"/>
Repeat drug offender (§ 961.48) <input type="checkbox"/> Pleased and proved	<input type="checkbox"/>	<input type="checkbox"/>
Distribution to persons under 18 (§ 961.46) <input type="checkbox"/> Pleased and proved	<input type="checkbox"/>	<input type="checkbox"/>
Possession near certain public places (§ 961.495) <input type="checkbox"/> Pleased and proved	<input type="checkbox"/>	<input type="checkbox"/>
Role in Offense		
Minimal / Leader	<input type="checkbox"/>	<input type="checkbox"/>
Manipulated or Pressured	<input type="checkbox"/>	<input type="checkbox"/>
Abused position of trust / authority	<input type="checkbox"/>	<input type="checkbox"/>
Other, <i>specify</i> :	<input type="checkbox"/>	<input type="checkbox"/>

Delivery or Possession w/ Intent to Deliver THC, 200–1000 grams -- Wis. Stats. §§ 961.41(1)(h), 961.41(1m)(h)

Other notable changes include the addition of detailed questions about victim vulnerability and separate sections for *applicable* penalty enhancers and statutory aggravating factors. Not all penalty enhancers and statutory aggravating factors are universal. For example, Wis. Stat. 973.017(3)(e)1 applies only to felonies committed to influence public policy or punish the government, **and** the crime involved death or great bodily harm, substantial property damage, force, violence, or the threat of force or violence. Under normal circumstances, this factor will *not* apply to drug crimes and crimes against the person.

Risk Factors

The second principal section, **Risk Factors**, contains more, and more fundamental, changes than **Offense Severity**. However, these changes apply across the board – from one worksheet to another. Previously, this section was divided into three parts:

- (A) Factors that may suggest heightened/lesser risk
- (B) Listing of all prior convictions/adjudications, including the year and offense
- (C) Criminal history

Most of the factors that appeared within parts (A) and (B) have been retained, though, again, their precise location and phrasing may have changed. As revised, this section includes new subsections for education, employment history, mental and physical health, alcohol and drug abuse, social factors and attitude. As seen below, this new format reorganizes and enlarges the list of items that were, before the revision, known simply as "factors that may suggest heightened/lesser risk."

II-Risk Assessment Evaluation Determine the defendant's risk to public safety or to re-offend. <i>See Notes Section II.</i> Consider the nature of the risk that the defendant poses and conditions necessary to reduce risk. A-Factors that may suggest heightened/lesser risk: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Previous acts (whether or not convictions/adjudications). <input type="checkbox"/> Employment history. <input type="checkbox"/> Mental health. <input type="checkbox"/> Dependence on controlled substances. <input type="checkbox"/> Dependence on alcohol. <input type="checkbox"/> Performance on bail. </div> <div style="width: 45%;"> <input type="checkbox"/> Age. <input type="checkbox"/> Physical condition. <input type="checkbox"/> Mental health treatment/counseling <input type="checkbox"/> Drug treatment. <input type="checkbox"/> Alcohol treatment. <input type="checkbox"/> Other _____ </div> </div> B-List (or attach) <u>all</u> convictions and/or juvenile adjudications including year and offense: <div style="margin-top: 10px;"> <div style="border-bottom: 1px solid black; width: 30%; display: inline-block;"></div> <div style="border-bottom: 1px solid black; width: 30%; display: inline-block;"></div> <div style="border-bottom: 1px solid black; width: 30%; display: inline-block;"></div> </div>	<div style="border: 1px solid black; padding: 2px; display: inline-block;">EXPIRED 7/1/2005</div>
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Delivery or Possession w/ Intent to Deliver THC, 200–1000 grams -- Wis. Stats. §§ 961.41(1)(h), 961.41(1m)(h)

RISK FACTORS	Mitigating	Aggravating
Education Grade completed, <i>circle one</i> : <u>9</u> 10 11 12 12+ Degree obtained: <input type="checkbox"/> None <input type="checkbox"/> GED/HSED <input type="checkbox"/> HS <input type="checkbox"/> College <input type="checkbox"/> Currently enrolled	<input type="checkbox"/>	<input type="checkbox"/>
Employment History Usually employed Same employer for extended period of time Employed when offense was committed or at time of sentencing Lengthy or frequent periods of unemployment	<input type="checkbox"/>	<input type="checkbox"/>
Criminal Record Criminal record not a factor, <i>check here</i> <input type="checkbox"/> No criminal record Prior misdemeanor(s), total number: <input type="text"/> — assaultive misdemeanors: <input type="text"/> Prior felony or felonies, total number: <input type="text"/> — assaultive felonies: <input type="text"/> Prior offense(s) similar to current offense Previously placed on community supervision Criminal history understates / overstates risk On legal status / not on legal status when crime was committed Time since most recent conviction / incarceration: <input type="text"/> mos / yrs	<input type="checkbox"/>	<input type="checkbox"/>
Mental and Physical Health Mental health problem(s) / physical health problem(s) Treatment for health problems	<input type="checkbox"/>	<input type="checkbox"/>
Alcohol and Drug Abuse Under the influence when the offense was committed Frequent prior abuse <input type="checkbox"/> Prior treatment <input type="checkbox"/> Never treated for alcohol/drug abuse	<input type="checkbox"/>	<input type="checkbox"/>
Social Factors Married or long-term relationship Resides with or supports children Family support or other support network Defendant suffered prior abuse	<input type="checkbox"/>	<input type="checkbox"/>
Attitude Remorse Accepts responsibility Detailed rehabilitative plan in progress Cooperated with authorities / prosecution Other, <i>specify</i> : _____	<input type="checkbox"/>	<input type="checkbox"/>

Delivery or Possession w/ Intent to Deliver THC, 200–1000 grams -- Wis. Stats. §§ 961.41(1)(h), 961.41(1m)(h)

The most significant change involves criminal history. This collection of factors was previously organized according to general concepts—lesser risk, medium risk and high risk—that appeared within the Sentencing Guidelines Notes. These concepts were associated with different combinations of prior offenses, including violent and nonviolent misdemeanors, violent and nonviolent felonies, and crimes committed while the defendant was on legal status, meaning probation, parole, extended supervision, etc. The revision accomplishes two goals: (1) simplifying the calculus of criminal history, and (2) allowing judges to specify whether certain factors—for example, prior felonies, prior misdemeanors, prior *assaultive* felonies, prior *assaultive* misdemeanors, or no prior convictions—are mitigating or aggravating. The new worksheets allow judges to explore criminal history in greater depth, taking into account not only prior convictions, but specific social and behavioral factors that frequently affect sentencing decisions.